

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

**REGULAR FIRST APPEAL NO.1322 OF 2005**

BETWEEN:

SMT. RANGAMMA  
W/O MUNIRANGAPPA,  
AGED ABOUT 60 YRS,  
RESIDING AT NO.163,  
CHIKKA MUNIYAPPA GARDEN  
3<sup>RD</sup> DIVISION, WARD NO.10,  
NEAR AYYAPPA TEMPLE,  
YELAHANKA, BENGALURU – 64.

...APPELLANT

(BY SMT.S.K.NAGARATHNA, ADVOCATE)

AND:

1. CHIKKANARASIAH  
S/O CHIKKANARASIMHAIAH  
AGED ABOUT 65 YRS  
RESIDING AT BANDEKODIGENAHALLI,  
CHIKKAJALA HOLBI,  
BENGALURU NORTH TALUK – 562 149.
2. D. NARAYANASWAMY  
S/O DODDAIAH  
AGED ABOUT 74 YRS  
RESIDING AT BANDAKODIGENAHALLI,  
CHIKKAJALA HOBLI  
BENGALURU NORTH TALUK – 562 149.

3. C.R.LOKNATH  
S/O RANGAPPA, MAJOR,  
RESIDING AT NO.2009,  
3<sup>RD</sup> PHASE, IV B CROSS,  
YELHANKA SATELLITE TOWN,  
BENGALURU – 64.
4. TRISHUL ENTERPIRSES  
REPRESENTED BY MANAGING DIRECTOR,  
C.RAVIKUMAR,  
OPP NAVRANG THEATRE,  
RAJAJINAGAR, BENGALURU – 10.

...RESPONDENTS

(NOTICE TO R1- SERVICE HELD SUFFICIENT  
V/O DATED 8.3.2011; R-2 – R4 SERVED.)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED 15.06.2005 PASSED IN OS NO.628 OF 1996 ON THE FILE OF THE PRINCIPAL CIVIL JDGE (SR. DN.) BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

THIS REGULAR FIRST APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This Regular First Appeal is directed against the judgment dated 15.06.2005 passed in O.S No.628/1996 by the Principal Civil Judge (Sr.Dn), Bengaluru Rural District, Bangalore.

2. For the sake of convenience, parties in this appeal shall be referred to in terms of their status before the Trial Court.

3. Plaintiff has filed a suit for declaration of title and also for permanent injunction restraining defendants 1, 2 and 4 from alienating the suit schedule property or in any way creating third party rights insofar as suit schedule property is concerned.

4. The plaint averments are that the plaintiff is the absolute owner in possession of the suit schedule property and she inherited the part of the schedule property by way of succession as well as remaining part of the schedule property by way of purchase through her Late husband Munirangappa in the year 1970 from one Sri.Kadirappa. Pursuant to the same, plaintiff is in possession and enjoyment of suit schedule property and khata of suit schedule property stands in the name of husband of plaintiff. Plaintiff further averred that the propositus of suit schedule property is one Hale Rangaiah, died leaving behind his two sons, namely, Nadikerappa and Rangappa. Rangappa died issueless. However, Nadikerappa had four sons by name Doddarangaiah, Chikkarangaiah, Hale Rangaiah and Hale Thimmaiah. There was a partition in the joint

family of Sri.Nadikerappa and the suit schedule property fallen into the share of Doddarangaiah. Doddarangaiah died leaving behind his only son Munirangappa (husband of plaintiff). The said Munirangappa died leaving behind the plaintiff and her two sons and daughter as legal heirs to succeed to his estate. Father-in-law of the plaintiff, Sri.Doddarangaiah had three wives out of which two wives died issueless, However, through his third wife by name Nanjamma, he had son by name Munirangappa (who is the husband of plaintiff). The mother-in-law of the plaintiff had a brother by name Eerappa S/o Muniyappa. It is further stated in the plaint that originally suit schedule property was purchased by said Eerappa as per Ex.P24. Thereafter, the suit schedule property was purchased by the father-in-law of the plaintiff from Eerappa by way of sale deed dated 15.07.1946 as per Ex.P6. Plaintiff further states that out of 3 acre 4 guntas in Sy.no.64/2 Doddarangaiah, father-in-law of plaintiff had sold an extent of 1 acre 24 guntas in favour of one Kadirappa in the year 1954. However, the possession of the above said land remained with father-in-law of the plaintiff. Plaintiff further states that the husband of plaintiff has

purchased the portion of land measuring 1 acre 24 guntas from Kadirappa in the year 1970 and pursuant to the aforesaid sale, plaintiff and her husband are in possession and enjoyment of Sy.no.64/2 measuring 3 acre 4 guntas which is the subject matter of the suit. Plaintiff further avers that the defendants herein have no right, title and interest insofar as suit schedule property is concerned since the husband of plaintiff has purchased the suit schedule property and thereafter, continued to cultivate the same. Plaintiff further states that defendants No.1 and 2 had never purchased suit schedule property either from the plaintiff or from her husband. It is further averred in the plaint that the defendants are illegally claiming title over suit schedule property and in view of the interference made by the defendants, plaintiff has filed suit for declaration and permanent injunction against the defendants 1, 2 and 4 from transferring, alienating or creating third party rights insofar as suit schedule property is concerned.

5. On service of notice, defendants 2 and 4 served with summons and are placed *exparte*. Defendants 1 and 3 have

represented through their advocates before the trial Court. The third defendant had filed written statement. The first defendant adopted the written statement filed by defendant No.3. Defendant No.3 stated that he is the absolute owner in possession and enjoyment of immovable property bearing No.64/2 situated at Bandakodigenahalli Village, Jala Hobli, Bangalore North Taluk having acquired the same under the registered sale deed dated 08.09.1994. Pursuant to the same, all the revenue records stand in his name; he further stated that the property bearing Sy.no.64/2 was originally owned and possessed by first defendant having acquired the same under the registered sale deed dated 04.06.1990. Pursuant to the registered sale deed dated 04.06.1990, the first defendant had changed the mutation entries insofar as Sy.no.64/2. Defendant No.3 further states that originally a piece of land to an extent of 29 guntas in Sy.no.64/2 belonged to one Smt. Rangamma, and thereafter, he purchased the same from the said Smt. Rangamma. It is further averred in the written statement that the said Smt.Rangamma had purchased the land bearing Sy.no.64/2 from its erstwhile owner Smt.Nagamma in the year

1968. It is further stated that even though Smt.Rangamma had purchased Sy.no.64/2 by way of sale deed dated 08.02.1964, her husband Doddaiiah was cultivating the land and as such, claim made by the plaintiff with regard to Sy.no.64/2 is without any basis. Further, the defendant No.3 stated that there was no existence of suit schedule property to an extent of 3 acre 4 guntas in Sy.no.64/2 as stated in the schedule to the plaint. In view of the same, defendant No.3 stated that the relief sought for by the plaintiff with regard to declaration does not survive for consideration. Insofar as consequential relief of permanent injunction is concerned, the defendant No.3 stated that the plaintiff had not made out the prima facie case and since there is discrepancy in the schedule mentioned in the plaint itself and further the defendant No.3 is in lawful possession of the suit schedule property, and as such, the plaintiff has not approached the court with clean hands. It is also stated that relief sought for with regard to relief of injunction is not maintainable as stated supra. Hence, the third defendant sought for dismissal of the suit.

6. On considering the pleadings made by the parties, trial Court has formulated the following issues:

- 1. Whether the plaintiff proves that she is the absolute owner in possession and enjoyment of the suit schedule property?*
- 2. Whether the plaintiff proves that the defendants are trying to alienate the suit schedule property?*
- 3. Is the plaintiff entitled for declaration as sought by her?*
- 4. Is the plaintiff entitled for permanent injunction?*
- 5. What Order?*

7. In order to prove the suit, plaintiff has examined PW1 to PW4 and got marked documents as Ex.P1 to P27. Though defendant No.3 filed written statement, neither produced any documents nor has examined in the suit. The trial Court after considering the material on record and the oral evidence of the parties has dismissed the suit by judgment and decree dated 15.06.2005. Being aggrieved by the same, plaintiff has preferred the instant appeal.



8. Heard Smt. S.K. Nagarathna learned counsel appearing for the appellant. By order dated 08.03.2011 service of notice to respondent No.1 is held sufficient. Notice issued to respondents No.2, 3 and 4 are served and are not represented in the appeal.

9. The main contention of the learned counsel appearing for the appellant is that the plaintiff's father-in-law Doddarangaiah has purchased the suit schedule property in the year 1946 and sold the same in favour of Kadirappa during 1954. Thereafter, husband of the plaintiff Munirangappa had repurchased the property from Kadirappa in the year 1970. Hence, she contends that, in view of subsequent purchase made by husband of the plaintiff, the suit schedule property became self-acquired property of the appellant/ plaintiff's husband and as such, learned counsel for appellant submits that the trial Court has not considered the said fact. The learned counsel appearing for the appellant further submits that the trial Court has solely relied upon the mutation entries and RTC extracts produced before the trial Court and as such, the trial Court

ultimately reached the conclusion that the plaintiff has no right, title or interest insofar as the suit schedule property is concerned is bad in law and the said finding recorded by the trial Court is without any basis. Yet another ground of submission made by the learned counsel appearing for the appellant is that the trial Court has dismissed the suit solely on the ground that the measurement shown in the schedule is different from the measurement mentioned in the revenue records. It is the case of the plaintiff that the trial Court has blatantly ignored Ex.P27, wherein it is shown as measuring 1 acre 24 guntas of land in Sy.no.64/2. In view of the same, she would submit that the judgment and decree passed by the trial Court requires to be set aside by this Court.

10. After hearing the learned counsel appearing for the appellant, I have carefully perused entire materials on record. The sole question for consideration is:

*"Whether the finding recorded by the trial Court on issue No.1 and 3 required to be answered in favour of plaintiffs or not?"*

11. At the outset, it is to be noticed that essential argument advanced by the learned counsel appearing for appellant that the plaintiff-appellant has inadvertently confused with the schedule property and same has resulted in dismissal of the suit. The trial Court having considered the material on record, while dealing with issue No.1 has considered the fact that the sale deed dated 19.01.1970, which was executed in favour of husband of the plaintiff by Kadirappa whereunder the extent of land recorded in Ex.P27 is 1 acre 24 guntas in Sy.no.64/2; however, the suit schedule property shown in the plaint reflects the measurement of suit schedule property as 3 acres 4 guntas of land. Hence, the plaintiff has failed to prove the remaining extent of land as stated in the plaint. Suffice to say that, the finding recorded by the trial Court with reference to the portion of the land sold by the plaintiff, under which plaintiff and her children have sold 1 acre 20 guntas of land including 1 gunta of kharab land in Sy.no.64/4 in favour of Smt. Manjudevi Agarwal, would reveal that the plaintiff has included the land sold to Smt. Manjudevi Agarwal under the above said sale deed as the plaint schedule. This aspect of the matter was considered

by the trial Court based on material on record and negated the issue relating to the ownership of plaintiff, which according to me is on the appreciation of evidence and records. The said finding is hereby accepted for the reason that the suit is one filed for declaration with consequential relief of permanent injunction. In the plaint schedule, there is no reference in respect of Sy.no.64/3 and 64/4, and as stated above, having considered the RTC's Exs.P8 to P18 wherein the extent of land in Sy.no.64/2 is only 29 guntas, whereas in the plaint it is shown as Sy.no.64/2 totally measuring 3 acre 4 guntas and in view of the same, the finding recorded by the trial Court that the suit schedule property is not correctly described by providing detailed measurement and survey numbers is just and proper and cannot be faulted by this Court. In view of the same, finding recorded by the trial Court with regard to issue No.1 does not call for any interference by this Court.

12. Though, the learned counsel appearing for the appellant advanced arguments with regard to the RTC extracts relating to suit schedule property, however, a clear finding has

been made by trial Court that the appellant being aware about the entries made in the RTC's prior to filing of the suit and despite the same, the plaintiff has not changed the entries made in the RTC's before the competent authority. Yet another ground for dismissal of appeal is that, the plaintiff has not explained the reason for not challenging the RTC extracts before a competent revenue court and therefore, it is settled principle of law that the Court can presume entries made in the RTC extract are true unless proved contrary. It is pertinent to mention here that on perusal of the pleadings as well as evidence of PW1, the plaintiff could not answer the question why the plaintiff has not impleaded one Tarachand Aildas, who has purchased the property from the third defendant herein in the year 1998. The perusal of evidence of PW1 in this regard envisages the absence of truth from the plaintiff. In view of the same, the finding recorded by the trial Court that the plaintiff has not proved the factum that Sy.no.64/2 and 64/3 had been retained by her father-in-law till his death and after his death, her husband plaintiff had succeeded to the same, is based on the material

evidence on record and hence, judgment and decree is just and proper.

13. It is settled principle of law that in the absence of pleading, any amount of evidence cannot be considered to fill up the lacuna in the pleadings. In the instant case, as there is discrepancy in the pleadings and in absence of any pleadings with regard to sale made by the plaintiff and her children in favour of Smt.Manjudevi Agarwal and the settled principle of law is that no party should be permitted to travel beyond the pleading and all that necessary requires that the material fact should be pleaded by the party in respect of the entire case as a whole. Primarily, the object of the pleading is to enable the affected party to know the case suggested in order to have a fair trial. It is imperative on the part of the plaintiff that she should state essential material fact, so that, the opposite party may not be taken by surprise. The pleading should receive liberal construction. In the instant case, the plaintiff has not explained about not impleading one Tarachand Alidas as party to the suit since defendant no.3 herein had sold the property in favour of

the said Tarachand Alidas in the year 1988. It is also forthcoming in the evidence of PW1 that he admits that Sy.no.64/4 has been sold by plaintiff and her children in favour of Smt. Manjula Devi Agarwal, which is also part and parcel of the plaint schedule. In view of the discussion made above, the trial Court rightly answered issues No.1 and 3 as against the plaintiffs. The said finding recorded by the trial Court is based on the material evidence and the same does not call for any interference by this Court even after re-evaluating the evidence. Therefore, the finding recorded by the trial Court with regard to issues No.1 and 3 and consequently declining to grant relief of permanent injunction in favour of the plaintiff is based on the documents produced by the plaintiff. Hence, the contention raised by the appellant with regard to issue No.1 and 3 is without any basis as the plaintiff has sold part of the suit schedule property. Therefore, appeal deserves to be dismissed.

14. The appellant has filed two applications viz. I.A.I/2016 for amendment of plaint; I.A.II/2016 for production of additional documents. I have carefully and consciously gone

through the applications and supporting affidavits, which, in my opinion, are liable to be rejected on the ground that the plaintiff has totally misconstrued the schedule of the land in question and has sought for declaratory relief. The plaintiff has included certain properties which is not belonging to her and hence, this Court is of the opinion that allowing the applications would change the nature of land and pave way for new cause of action in the original suit itself. Therefore, the applications IA.I and IA.II of 2016 are rejected. In the result, I pass the following:

**ORDER**

1. Appeal is dismissed.
2. Judgment and decree dated 15.06.2005 passed in OS No.628/1996 by the Principal Civil Judge (Sr.Dn), Bengaluru Rural District, Bengaluru is confirmed.

No order as to costs.

**Sd/-  
JUDGE**

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